



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

SEP 06 2011

Colonel Robert D. Peterson
District Engineer
Huntington District
U.S. Army Corps of Engineers
502 Eighth Street
Huntington, West Virginia 25701-2070

Dear Colonel Peterson:

The U.S. Environmental Protection Agency (EPA) August 12, 2011 letter provided comments in response to a June 13, 2011 Public Notice issued for ICG Eastern LLC's proposed Jennie Creek Surface Mine and Preparation Plant located near Breeden, Mingo County, West Virginia.

EPA's letter referenced Part IV, paragraph 3(a), of the 1992 Clean Water Act (CWA) Section 404(q) Memorandum of Agreement (MOA) between the EPA and the Department of the Army. The proposed project involves the construction of twelve (12) valley fills, one (1) refuse fill, and seventeen (17) in-stream sediment ponds resulting in impacts to 22,305 linear feet of jurisdictional stream channels within tributaries of Jennie Creek, Jacks Fork, Turkey Creek, and Breeden Creek within the West Fork Twelvepole Creek and Rockcastle Creek-Tug Fork watersheds.

EPA's comments were based on the June 13, 2011 Public Notice, the application, and supplemental documentation including the Environmental Information Document, and the Compensatory Mitigation Plan (CMP). EPA expressed concern that the project could result in significant degradation of the aquatic ecosystem, and recommended that efforts be considered to address such impacts. We are concerned with the proposed mine design and construction techniques as they affect discharges to waters of the United States, the adequacy of the CMP for ensuring the replacement of lost stream functions, and the assurance that project impacts will be adequately monitored. EPA identified the need for appropriate adaptive management strategies to be in place, and recommended that a cumulative effects analysis be conducted. EPA also provided substantial technical comments on these and other topics. A copy of our letter and technical comments is enclosed.

Additional information has not been provided to address the concerns described in our August 12, 2011 letter. EPA continues to be concerned that the proposed discharge of dredged or fill material into waters of the U.S. associated with this project does not comply with the CWA 404(b)(1) Guidelines, 40 C.F.R. Part 230, that form the substantive environmental criteria upon which CWA Section 404 permit decisions are based. Therefore, consistent with Part IV,

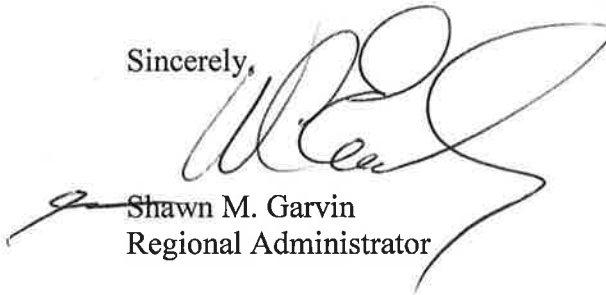


paragraph 3(b), of the 1992 CWA 404(q) MOA between the EPA and the Department of the Army, the EPA believes that the discharge, as proposed, will result in substantial and unacceptable impacts on aquatic resources of national importance.

EPA believes there are opportunities to address these concerns. We look forward to working with your staff and the applicant to discuss and resolve these issues.

If you have questions, please do not hesitate to contact me or have your staff contact Mr. John R. Pomponio, Director of the Environmental Assessment & Innovation Division, at 215-814-2702.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Garvin", is written over the typed name and title.

Shawn M. Garvin
Regional Administrator

Enclosure

